

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

PAMELA MARIE DEACON,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner  
of Social Security,<sup>1</sup>

Defendant.

Case No.: 1:21-cv-00641-BAM

**ORDER REGARDING SOCIAL SECURITY  
COMPLAINT**

(Docs. 15, 18)

**INTRODUCTION**

Plaintiff Pamela Marie Deacon (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for disability insurance benefits under Title II of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Barbara A. McAuliffe.<sup>2</sup>

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<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew Saul as the defendant in this suit.

<sup>2</sup> The parties consented to have a United States Magistrate Judge conduct all proceedings in this case, including entry of final judgment, pursuant to 28 U.S.C. § 636(c). (Docs. 4, 7, 8.)

1 Having considered the briefing and record in this matter, the Court finds the decision of the  
 2 Administrative Law Judge (“ALJ”) to be supported by substantial evidence in the record as a whole  
 3 and based upon proper legal standards. Accordingly, this Court affirms the agency’s determination to  
 4 deny benefits.

### 5 **FACTS AND PRIOR PROCEEDINGS**

6 Plaintiff protectively filed an application for disability insurance benefits on January 4, 2018.  
 7 AR 291-92, 293-94.<sup>3</sup> Plaintiff alleged that she became disabled on December 8, 2017, due to  
 8 dysautonomia, fibromyalgia, hiatal hernia, idiopathic ventricular tachycardia, moderate asthma,  
 9 edema, stage 2 kidney failure, mitral valve prolapse, chronic migraines, irritable bowel syndrome,  
 10 vasal vagal syncope, de Quervain Syndrome, carpal tunnel in both hands, and cubital tunnel. AR  
 11 323-24. Plaintiff’s application was denied initially and on reconsideration. AR 141-45, 150-54.  
 12 Subsequently, Plaintiff requested a hearing before an ALJ. ALJ Diane Davis held a hearing May 26,  
 13 2020. AR 34-77. ALJ Davis issued an order denying benefits on September 1, 2020. AR 7-27.  
 14 Plaintiff sought review of the ALJ’s decision, which the Appeals Council denied, making the ALJ’s  
 15 decision the Commissioner’s final decision. AR 1-5. This appeal followed.

### 16 **Hearing Testimony**

17 The ALJ held a telephonic hearing on May 26, 2020. Plaintiff appeared at the hearing with  
 18 her attorney, James Yoro. AR 35, 39. Dr. Dennis Duffin, an impartial vocational expert, also  
 19 appeared and testified. AR 39.

20 In response to questions from her attorney, Plaintiff testified that she earned an associate  
 21 degree as a paralegal. She last worked in December 2017 and has not worked in any capacity since  
 22 that time. AR 43-44. She stopped working due to her cardiac issues and her fibromyalgia. In  
 23 addition, she had a Worker’s Compensation case based on injury to her bilateral hands, wrists and  
 24 elbows. She has had medical treatment and numerous surgeries on the right hand and surgery on the  
 25 left hand and elbow. AR 44-45.

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26  
 27  
 28 <sup>3</sup> References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 At the time she stopped working, she was a child support officer for the County of Kern. Her  
2 job responsibilities included establishing court orders for child support and seeing customers all day  
3 long. She was sedentary most of the day with constant typing and writing. In the last two years or  
4 work, her health declined dramatically, especially after she hurt her hand. A year prior to filing her  
5 Worker's Compensation claim, she saw a doctor for trouble with her right thumb, which he said was  
6 work related. However, she continued to work until she had surgery on her right hand in December  
7 2016. She did not have left hand, wrist and elbow surgery until two years later. She did not return to  
8 work after her first surgery in December 2016 because she had a second surgery. After the second  
9 surgery, she returned to work in a modified position as a receptionist, but her job was not modified as  
10 recommended by her Worker's Compensation doctor. Instead, she was constantly working eight  
11 hours, except for a 15-minute break in the morning, a 15-minute break in the afternoon and her lunch.  
12 She continued the same job even after her surgery, despite the work restrictions. AR 45-48.

13 During that time, her cardiac issues started worsening and she started having fibromyalgia  
14 flares. This had an effect on her ability to stay on the job and she was actually off work more than  
15 she was on. Her doctor pulled her off of work. He restricted her to no more than four hours total in  
16 an 8-hour workday, but she was not able able to get any modification from the county that would  
17 allow for that. AR 48-49.

18 Plaintiff testified that she also was diagnosed with severe debilitating neurocardiogenic  
19 syncope and POTS. Plaintiff explained that the blood pools at her feet and she does not have a  
20 regular circulatory system that pushes the blood back up to her heart. This causes dizziness,  
21 lightheadedness, and extreme fatigue, and she is prone to falls. AR 49-50.

22 Plaintiff further testified that she is in constant pain from the fibromyalgia. She has flares that  
23 can last a couple of days or weeks. She takes daily medication for it. She sees a chronic pain  
24 management specialist for her hands and one for her back issues and general fibromyalgia control.  
25 She also suffers from chronic migraines. She sees a neurologist and she has suffered mini strokes  
26 from her migraines. AR 50-51.

27 When asked how her medical conditions affect her ability to function, Plaintiff testified that  
28 there are a lot of things that she cannot do any longer and she has to have a lot of help from her

1 family. AR 51. She believed that she could not function at a sustained activity level more than four  
2 hours in a day because she constantly has to rest. She also has no grip strength, drops things  
3 constantly, and can only lift a gallon of milk. AR 51-52.

4 When asked about her medication, Plaintiff testified that she takes a narcotic medication,  
5 Norco. It makes her sleepy and nauseous. It also affects her ability to focus and concentrate. She  
6 still has a valid driver's license, but she has to be careful because of the dizziness. AR 52-53.

7 Plaintiff further testified that her condition has worsened since she stopped working. She had  
8 more attacks with the dysautonomia and POTS. She also needs one more surgery on her right hand  
9 and elbow. Surgery has been postponed in the past because her cardiologist did not have a cardiac  
10 plan. AR 53-54.

11 When asked to describe a typical day, Plaintiff testified that she has doctor's appointments  
12 and she watches TV and movies, reads and prepares simple meals. She gets very tired in the  
13 afternoons and lies down. She will usually sleep for about an hour. She lives with her husband and  
14 17-year-old daughter. Her husband works full time. Her daughter helps a little with activities of  
15 daily living, but she has mental issues and is not a full-functioning 17-year-old. AR 54-55.

16 In response to questions from the ALJ, Plaintiff testified that her Worker's Compensation case  
17 had settled, and her surgery will be paid for as part of that settlement. Plaintiff explained that when  
18 she returned to work after her surgeries, she worked as a receptionist, but they returned her to a full-  
19 time child support position after five months, which involved working on a computer all day. When  
20 working at the receptionist position, she was greeting clients and notifying staff when individuals  
21 arrived. AR 55-58.

22 Plaintiff moved to Texas in 2019 because of her husband's job. She has a Texas driver's  
23 license with no restrictions except to wear glasses. AR 59-60. Although she has a cardiologist in  
24 Texas, she kept her cardiologist in California and sees him once every six months. She flies back to  
25 California by herself. AR 61-.65.

26 Following Plaintiff's testimony, the ALJ elicited testimony from the VE. The VE categorized  
27 Plaintiff's past work as child support officer and receptionist. AR 67-68. The ALJ also asked the VE  
28 hypotheticals. For the first hypothetical, the ALJ asked the VE to assume an individual of the

1 claimant's age, education and work experience. This individual could perform work at the light level  
2 of exertion and could lift and/or carry 20 pounds occasionally and 10 pounds frequently, could stand  
3 and/or walk for about six hours total in an eight- hour workday and sit for more than six hours total in  
4 an eight-hour workday. The individual could frequently push and/or pull with the bilateral upper  
5 extremities, could occasionally climb ramps and stairs, but could never climb ladders, ropes or  
6 scaffolds or work at unprotected heights. The individual could frequently reach in all directions  
7 bilaterally, could tolerate occasional exposure to loud noise, excessive vibration and to atmospheric  
8 conditions. The VE testified that such an individual could perform all of Plaintiff's past work. AR  
9 68-69.

10 For the second hypothetical, the ALJ added to the first hypothetical that the individual could  
11 frequently handle and finger bilaterally. The VE confirmed that Plaintiff's past work would remain.  
12 AR 69.

13 For the third hypothetical, the ALJ added to the second hypothetical a further restriction that  
14 the individual could not type for ten minutes every two hours. The VE testified that based on his  
15 experience, the individual could perform Plaintiff's past work. AR 69-70.

16 For the fourth hypothetical, the ALJ asked the VE to assume an individual of the claimant's  
17 age, education and work experience who could perform work at the light level of exertion and could  
18 stand for up to eight hours total in an eight-hour workday, walk for up to eight-hours in an eight-hour  
19 workday and sit for up to eight hours in an eight-hour workday. This individual could bend, squat,  
20 climb and twist for up to eight hours total in an eight-hour workday, could reach in all directions for  
21 up to four hours total in an eight-hour workday, could grasp for up to four hours total in an eight-hour  
22 workday and could push and/or pull for up to four hours total in an eight-hour workday. The  
23 individual could never crawl but could drive up to four hours total in an eight-hour workday, and  
24 could not lift, push, pull, grasp or torque over 15 pounds. The VE testified that the reaching and  
25 grasping limitations would eliminate Plaintiff's past work. AR 70. However, other work existed in  
26 the national economy for such an individual, such as furniture rental clerk, dealer account  
27 investigator, and usher. AR 70-71.

1 If the ALJ added to the hypothetical that the work involved no climbing of ladders, ropes or  
2 scaffolds or working at unprotected heights, the VE testified that these jobs would remain. If the ALJ  
3 further added that the individual would be off task 15% or more in a workday, the VE testified that it  
4 would eliminate all competitive work. AR 71.

5 Following the ALJ's questions, Plaintiff's attorney asked the VE to consider the fourth  
6 hypothetical before the addition of the last limitation and add a limitation with respect to the bilateral  
7 upper extremities to include no repetitive manipulation of any kind for more than 30 minutes without  
8 a five-minute rest over four hours in an eight-hour workday. Repetitive motion would be for thirty  
9 minutes with a five-minute rest. The VE testified that if the individual could not do more than 30  
10 minutes of repetitive motion, then it would eliminate those jobs. However, there would be a job with  
11 no manipulation at the light level - school bus monitor – and one at the sedentary level – surveillance  
12 system monitor. AR 72-73. The VE also confirmed that absence once a week would not be tolerated  
13 and would eliminate all competitive work. AR 74.

#### 14 **Medical Record**

15 The relevant medical record was reviewed by the Court and will be referenced below as  
16 necessary to this Court's decision.

#### 17 **The ALJ's Decision**

18 Using the Social Security Administration's five-step sequential evaluation process, the ALJ  
19 determined that Plaintiff was not disabled under the Social Security Act from December 8, 2017,  
20 through the date of the decision. AR 10-27. Specifically, the ALJ found that Plaintiff had not  
21 engaged in substantial gainful activity since December 8, 2017, her alleged onset date. AR 12-13.  
22 The ALJ identified the following severe impairments: bilateral cubital tunnel syndrome with release,  
23 bilateral carpal tunnel syndrome (CTS) with release, right de Quervain's with release, left first dorsal  
24 compartment release, dysautonomia, positional orthostatic tension syndrome, migraines, and  
25 fibromyalgia. AR 13-15. The ALJ determined that the severity of Plaintiff's impairments did not  
26 meet or equal any of the listed impairments. AR 16-17.

27 Based on a review of the entire record, the ALJ found that Plaintiff retained the residual  
28 functional capacity ("RFC") to perform light work, including lifting and/or carrying 20 pounds

1 occasionally and 10 pounds frequently, standing and/or walking for about six hours total in an eight-  
 2 hour workday, and sitting for more than six hours total in an eight-hour workday. She could  
 3 frequently push and/or pull with the bilateral upper extremities, could occasionally climb ramps and  
 4 stairs, but never climb ladders, ropes, or scaffolds or work at unprotected heights, could frequently  
 5 reach in all direction bilaterally, could frequently handle and finger bilaterally and could tolerate  
 6 occasional exposure to loud noises, excessive vibration, and atmospheric conditions. AR 17-26.  
 7 With this RFC, the ALJ found that Plaintiff was capable of performing her past relevant work as a  
 8 child support officer and receptionist. AR 26-27. The ALJ therefore concluded that Plaintiff had not  
 9 been under a disability under the Social Security Act from December 8, 2017, through the date of the  
 10 decision. AR 27.

### 11 **SCOPE OF REVIEW**

12 Congress has provided a limited scope of judicial review of the Commissioner's decision to  
 13 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this  
 14 Court must determine whether the decision of the Commissioner is supported by substantial evidence.  
 15 42 U.S.C. § 405(g). Substantial evidence means "more than a mere scintilla," *Richardson v. Perales*,  
 16 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,  
 17 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a reasonable mind might accept as  
 18 adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The record as a whole must be  
 19 considered, weighing both the evidence that supports and the evidence that detracts from the  
 20 Commissioner's conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). In weighing the  
 21 evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*,  
 22 *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the  
 23 Commissioner's determination that the claimant is not disabled if the Commissioner applied the  
 24 proper legal standards, and if the Commissioner's findings are supported by substantial evidence. *See*  
 25 *Sanchez v. Sec'y of Health and Human Servs.*, 812 F.2d 509, 510 (9th Cir. 1987).

### 26 **REVIEW**

27 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in  
 28 substantial gainful activity due to a medically determinable physical or mental impairment which has

1 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §  
 2 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such  
 3 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or  
 4 her age, education, and work experience, engage in any other kind of substantial gainful work which  
 5 exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The  
 6 burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir.  
 7 1990).

### 8 DISCUSSION<sup>4</sup>

9 Plaintiff contends that the ALJ erred at step two of the sequential evaluation by concluding  
 10 that certain of Plaintiff's impairments were non-severe impairments. (Doc. 15 at 12.) Plaintiff also  
 11 contends that the ALJ erred at step three of the sequential evaluation by failing to properly determine  
 12 whether she met or equaled a listed impairment. Plaintiff further contends that the ALJ erred in the  
 13 evaluation of the reports of her treating physicians, Drs. John Santaniello and Jared M. Salvo. (*Id.* at  
 14 17.) Finally, Plaintiff contends that the ALJ improperly discounted her symptom allegations.

#### 15 **A. Step Two Impairments**

16 Plaintiff first argues that the ALJ erroneously concluded that certain of her impairments were  
 17 non-severe at step two of the sequential evaluation.

18 At step two of the five-step sequential evaluation, the ALJ is required to determine whether a  
 19 plaintiff has a "severe" medical impairment or combination of impairments. 20 C.F.R. § 404.1520(c).  
 20 An impairment, or combination of impairments, can be found to be non-severe if the evidence  
 21 establishes a slight abnormality that has no more than a minimal effect on an individual's ability to  
 22 work. *See* SSR 85–28, 1985 WL 56856 (Jan. 1, 1985); *see also Yuckert v. Bowen*, 841 F.2d 303, 306  
 23 (9th Cir.1988) (adopting SSR 85–28). "The mere existence of an impairment is insufficient proof of  
 24 a disability." *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir.1993). A claimant bears the burden of  
 25 proving that an impairment is disabling. *Id.* (citation omitted).

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26  
 27 <sup>4</sup> The parties are advised that this Court has carefully reviewed and considered all of the briefs, including  
 28 arguments, points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific  
 argument or brief is not to be construed that the Court did not consider the argument or brief.



1 “Step two is merely a threshold determination meant to screen out weak claims.” *Buck v.*  
 2 *Berryhill*, 869 F.3d 1040, 1048 (9th Cir. 2017), citing *Bowen v. Yuckert*, 482 U.S. 137, 146–47  
 3 (1987). “It is not meant to identify the impairments that should be taken into account when  
 4 determining the RFC . . . . The RFC . . . *should* be exactly the same regardless of whether certain  
 5 impairments are considered ‘severe’ or not.” *Id.* (emphasis in original). Any error in failing to  
 6 include an impairment at step two is harmless if the ALJ considered any limitations imposed by the  
 7 impairment in the RFC determination at step four. *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007)  
 8 (“The decision reflects that the ALJ considered any limitations posed by the bursitis at Step 4. As  
 9 such, any error that the ALJ made in failing to include the bursitis at Step 2 was harmless.”).

10 Here, at step two of the sequential evaluation, the ALJ found that Plaintiff’s bilateral cubital  
 11 tunnel syndrome with release, bilateral carpal tunnel syndrome with release, right de Quervain’s with  
 12 release, left first dorsal compartment release, dysautonomia, positional orthostatic tension syndrome  
 13 (“POTS”), migraine and fibromyalgia were severe impairments. AR 13. Further, the ALJ found that  
 14 multiple alleged impairments were not severe medically determinable impairments, including, but not  
 15 limited to, bilateral shoulder strain, basal joint arthritis of the bilateral thumbs and right middle trigger  
 16 finger, degenerative disc disease of the lumbar spine, hiatal hernia, asthma, stage II kidney failure,  
 17 irritable bowel syndrome, Duane’s syndrome of the right eye, allergies, chronic venous insufficiency,  
 18 Raynaud’s syndrome and hand tremor. AR 13.

19 Although arguing that the ALJ erred at step two, Plaintiff does not identify which impairments  
 20 she believes the ALJ erroneously determined were not severe impairments.<sup>5</sup> Plaintiff asserts:

21 When applying this narrow standard [at step two] to the evaluation conducted by the ALJ,  
 22 the ALJ’s conclusions are not supported by substantial medical evidence in the record.  
 23 This is particularly true with respect to the opinions of Dr. Salvo, Dr. Alexan and the  
 24 cardiovascular treaters. (Tr. 1455- 1460, 959 – 967, 1033 – 1058, 1387 – 1454) All of  
 these doctors outline the severity of the client’s condition and indicate that additional  
 restrictions are warranted beyond those imposed by the orthopedists.

25 (Doc. 15 at 12.)

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27 <sup>5</sup> Plaintiff argues that all of non-severe medical impairments, “when considered in combination with the severe  
 28 medically determinable impairments accepted by the ALJ significantly impact the Plaintiff’s residual  
 functional capacity.” (Doc. 15 at 4.) This argument does not identify error at step two.

1 A review of the cited records shows that Dr. Jared M. Salvo variously assessed Plaintiff with  
 2 POTS, neurocardiogenic syncope, dysautonomia orthostatic hypotension syndrome, labile  
 3 hypertension, orthostatic hypotension, obesity, dizziness, bicuspid aortic valve, venous insufficiency,  
 4 tachycardia, carpal tunnel syndrome, fatigue, palpitations, pre-syncope, neurocardiogenic pre-  
 5 syncope, and anxiety. AR 1388-91, 1392-96, 1397-1401, 1402-05, 1408-12, 1413-16, 1419-22,  
 6 1424-27, 1429-1432, 1433-36, 1437-40, 1441-45, 1449-52, 1456-60. Dr. Ajay Patel diagnosed  
 7 Plaintiff with dysautonomia orthostatic hypotension syndrome, neurocardiogenic syncope,  
 8 fibromyalgia, heart palpitations, and heart racing. AR 1446-48. Dr. Richard Alexan assessed  
 9 Plaintiff with chronic migraine, migraine with aura, polypharmacy, history of convulsive syncope  
 10 (suspect POTs – dysautonomia), dysautonomia, tremor – stress induced, fibromyalgia, Duane’s  
 11 syndrome of right eye, and depression. AR 959-62, 1033-37, 1041-44, 1048-52.

12 Plaintiff does not identify which, if any of these impairments, were not found severe, but  
 13 should have been. Absent specific identification of the impairments that Plaintiff believes the ALJ  
 14 should have found severe, the Court cannot conclude that the ALJ committed reversible error at step  
 15 two. The Court will not expend its scarce resources scouring the record to determine if one or more  
 16 of Plaintiff’s multiple alleged impairments was erroneously found to be a non-severe impairment.  
 17 Indeed, the Court has no obligation to do so. *See, e.g., Duron v. Kijakazi*, No. 1:21-cv-00149-GSA,  
 18 2022 WL 3083735, at \*9 (E.D. Cal. Aug. 3, 2022) (concluding court has no obligation to scan the  
 19 record in search of inaccurate, incorrect or unsupported inferences).

20 In her reply brief, Plaintiff argues that the ALJ erred at step two with regard to her “cardiac  
 21 impairments.” (Doc. 20 at 3.) Again, this general reference to “cardiac impairments” is not sufficient  
 22 identification of the claimed error. The Court recognizes that Plaintiff also cites to Dr. Salvo’s  
 23 opinion regarding Plaintiff’s RFC, but this, too, lacks the necessary specificity given that Dr. Salvo  
 24 identifies multiple diagnoses, including neurocardiogenic syncope, dysautonomia, POTS, and venous  
 25 insufficiency. AR 1456. At least two of those identified diagnoses—dysautonomia and POTS—were  
 26 found to be severe impairments by the ALJ. AR 13.

27 Even assuming *arguendo* that the ALJ failed to find certain, unspecified cardiac  
 28 impairment(s) severe at step two, any such error is harmless because the ALJ considered any

1 limitations imposed by Plaintiff's cardiac impairments at step four of the sequential evaluation.  
 2 *Lewis*, 498 F.3d at 911. For example, the ALJ considered Plaintiff's history of cardiac treatment,  
 3 including for heart palpitations and near syncopal episodes, for which the ALJ included precautionary  
 4 limitations in the RFC, including limiting her climbing and exposure to hazards, loud noise, vibration  
 5 and atmospheric conditions. AR 19. Additionally, the ALJ considered Plaintiff's syncope,  
 6 tachycardia, and venous insufficiency. AR 19-20. As to Plaintiff's purported challenge regarding the  
 7 diagnoses in Dr. Salvo's RFC assessment, the ALJ specifically considered both Dr. Salvo's treatment  
 8 records and his RFC assessment at step four of the sequential evaluation. AR 24-25. As discussed in  
 9 greater detail below, the ALJ did not err in her evaluation of Dr. Salvo's RFC assessment and  
 10 opinion.

11 Based on the foregoing, the Court finds that the ALJ did not commit reversible error at step  
 12 two of the sequential evaluation.

### 13 **B. Step Three**

14 Plaintiff next argues that the ALJ erred at step three of the sequential evaluation by  
 15 concluding that her impairments did not meet or equal listing 1.02. (Doc. 15 at 14.)

16 At step three, the ALJ determines whether "a claimant's impairment meets or equals an  
 17 impairment listed in [20 C.F.R. part 404, subpart P, appendix 1]." *Tackett v. Apfel*, 180 F.3d 1094,  
 18 1099 (9th Cir. 1999). The Listing of Impairments describes specific impairments of each of the major  
 19 body systems "which are considered severe enough to prevent a person from doing any gainful  
 20 activity." *Id.* (citing 20 C.F.R. § 404.1525). If a claimant meets or equals a listed impairment he or  
 21 she will be found disabled at this step without further inquiry. *Id.* (citing 20 C.F.R. § 404.1520(d)).

22 A claimant bears the burden of proving that his or her impairments satisfy all the criteria of a  
 23 particular listing. *Id.* "For a claimant to show that his [or her] impairment matches a listing, it must  
 24 meet *all* of the specified medical criteria. An impairment that manifests only some of those criteria,  
 25 no matter how severely, does not qualify." *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (emphasis in  
 26 original). If a claimant's impairment or combination of impairments meets or exceeds a "listing," no  
 27 specific finding is necessary as to the claimant's ability to perform his or her past relevant work or  
 28 any other jobs. 20 C.F.R. § 404.1520(d).

1 Plaintiff contends that her impairments meet or equal 1.02. Listing 1.02 for major dysfunction  
2 of a joint is characterized by:

3 gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis,  
4 instability) and chronic joint pain and stiffness with signs of limitation of motion or other  
5 abnormal motion of the affected joint(s), and findings on appropriate medically acceptable  
6 imaging of joint space narrowing, bony destructions, or ankylosis of the affected joint(s).  
7 With:

8 A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee, or  
9 ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

10 or

11 B. Involvement of one major peripheral joint in each upper extremity (*i.e.*,  
12 shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross  
13 movements effectively, as defined in 1.00B2c.

14 20 C.F.R. Pt. 404, Subpt. P, Appx. 1 § 1.02.

15 At step three, the ALJ found that Plaintiff did not have an impairment or combination of  
16 impairments that met or medically equaled the severity of listing 1.02. AR 16. The ALJ reasoned as  
17 follows:

18 The claimant's impairments do not meet Listing 1.02 for major dysfunction of a joint  
19 because credible medical evidence does not show gross anatomical deformity (e.g.,  
20 subluxation, contracture, bony or fibrous ankylosis, instability), and chronic joint pain and  
21 stiffness with signs of limitation of motion or other abnormal motion of the affected  
22 joint(s), and findings on appropriate medically acceptable imaging of joint space  
23 narrowing, bony destruction, or ankylosis of the affected joint(s), with one of the following.  
24 A) Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee, or ankle),  
25 resulting in inability to ambulated effectively, as defined in 1.00B2b; Or B) Involvement of  
26 one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand),  
27 resulting in inability to perform fine and gross movements effectively, as defined in  
28 1.00B2c. The evidence of record does not document an inability to perform fine and gross  
movements effectively.

AR 16.

Plaintiff asserts that the ALJ erred by concluding there was no credible medical evidence  
showing gross anatomical deformity such as subluxation and chronic joint pain and stiffness with  
signs of limitation of motion. Plaintiff asserts that the record is replete with references to  
subluxation, joint pain and joint stiffness. (Doc. 15 at 14.) Plaintiff's argument is not sufficient to  
demonstrate that the ALJ erred at step three by concluding that her impairments did not meet listing  
1.02. Plaintiff has failed to satisfy her burden to demonstrate that she met *all* of the specified medical

1 criteria for listing 1.02. In particular, Plaintiff fails to demonstrate by citation to the medical record  
 2 that she met the A or B requirements of listing 1.02, such as the inability to ambulate effectively or  
 3 the inability to perform fine and gross movements effectively. Moreover, Plaintiff does not challenge  
 4 the ALJ's determination that the evidence of record did not document an inability to perform fine and  
 5 gross movements effectively as required under the 1.02.B. Indeed, Plaintiff has not referenced this  
 6 finding or otherwise demonstrated how she meets this medical criterion. (*See generally* Doc. 15.)  
 7 The Court therefore cannot assign error.

8        Additionally, Plaintiff argues that the ALJ should have found that her impairments medically  
 9 equaled the listing. "To equal a listed impairment, a claimant must establish symptoms, signs and  
 10 laboratory findings 'at least equal in severity and duration' to the characteristics of a relevant listed  
 11 impairment . . . ." *Tackett*, 180 F.3d at 1099 (quoting 20 C.F.R. § 416.1526); *see also Sullivan*, 493  
 12 U.S. at 531 (to establish equivalency, the claimant "must present medical findings equal in severity to  
 13 all the criteria" for the listing (emphasis in original)). Plaintiff bears the burden of proof at step three.  
 14 *Bowen*, 482 U.S. at 146 n.5. Further, "[a]n ALJ is not required to discuss the combined effects of a  
 15 claimant's impairments or compare them to any listing in an equivalency determination, unless the  
 16 claimant presents evidence in an effort to establish equivalence." *Kennedy v. Colvin*, 738 F.3d 1172,  
 17 1178 (9th Cir. 2013) (quoting *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005)). Plaintiff cites  
 18 nothing to demonstrate that she presented evidence of equivalency to the ALJ, and the hearing  
 19 transcript includes no such argument regarding equivalency. (*See* AR 42-43.) Plaintiff also does not  
 20 cite evidence to the Court in an effort to establish equivalence. (Doc. 15 at 14 -15.)

21        For these reasons, the Court finds that the ALJ did not commit reversible error at step three of  
 22 the sequential evaluation.

### 23        C.        **Evaluation of Medical Opinion Evidence**

24        Plaintiff argues that the ALJ erred by giving greater weight to the opinions of the state agency  
 25 medical consultants as opposed to those of her treating and examining physicians, Dr. John  
 26 Santaniello and Dr. Salvo. (Doc. 15 at 17.)

27        Because Plaintiff applied for benefits after March 27, 2017, her claim is governed by the  
 28 agency's new regulations concerning how an ALJ must evaluate medical opinions. 20 C.F.R. §

1 404.1520c Under the new regulations, the Commissioner does “not defer or give any specific  
 2 evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative  
 3 medical finding(s), including those from [a claimant’s] medical sources.” 20 C.F.R. § 404.1520c(a).  
 4 The Commissioner evaluates the persuasiveness of the medical opinions based on the following  
 5 factors: (1) supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; and  
 6 (5) other factors, such as “evidence showing a medical source has familiarity with the other evidence  
 7 in the claim or an understanding of our disability program’s policies and evidentiary requirements.”  
 8 20 C.F.R. § 404.1520c(c)(3)(1)-(5). Supportability and consistency are the most important factors in  
 9 determining persuasiveness. 20 C.F.R. § 404.1520c(b)(2).

10 Ninth Circuit case law preceding the new regulations afforded deference to the medical  
 11 opinions of treating and examining physicians. Indeed, prior to the current regulations, the Ninth  
 12 Circuit required ALJs to provide clear and convincing or specific and legitimate reasons for rejecting  
 13 the medical opinions of treating or examining physicians. Contrary to Plaintiff’s arguments, these  
 14 standards of articulation no longer apply in light of the new regulations, and the ALJ is not required  
 15 to provide “specific and legitimate reasons” to discount the medical opinions. *See Woods v. Kijakazi*,  
 16 32 F.4th 785, 792 (9th Cir. 2022) (finding revised social security regulations “clearly irreconcilable  
 17 with our caselaw according special deference to the opinions of treating and examining physicians on  
 18 account of their relationship with the claimant”). The Ninth Circuit has clarified that “under the new  
 19 regulations, an ALJ cannot reject an examining or treating doctor’s opinion as unsupported or  
 20 inconsistent without providing an explanation supported by substantial evidence.” *Id.* “The agency  
 21 must ‘articulate ... how persuasive’ it finds ‘all of the medical opinions’ from each doctor or other  
 22 source, . . . and ‘explain how [it] considered the supportability and consistency factors’ in reaching  
 23 these findings.” *Id.* (internal citations omitted).

24 Plaintiff asserts that the ALJ erred by affording greater weight to the opinions of the state  
 25 agency consultants than those of her treating physicians. (Doc. 15 at 16-17.) Plaintiff’s argument is  
 26 not persuasive. Under the applicable regulations, the ALJ was not required defer or give any specific  
 27 evidentiary weight, including controlling weight, to Plaintiff’s treating or examining physicians. 20  
 28

1 C.F.R. § 404.1520c(a). Nevertheless, the Court considers Plaintiff's general assertion that the ALJ  
2 erred in her evaluation of the medical opinions of Drs. Santaniello and Salvo. (Doc. 15 at 17.)

3 Dr. Santaniello

4 Dr. Santaniello conducted an agreed medical evaluation in December 2016, prior to Plaintiff's  
5 alleged onset date. AR 683-705, 706. On physical examination, Plaintiff walked with a normal gait.  
6 In her bilateral shoulders, she had tenderness over the trapezius and rhomboid muscles bilaterally, but  
7 her range of motion was normal. In her bilateral elbows, she had tenderness over the cubital tunnel  
8 bilaterally, right greater than left, and tenderness over the medial epicondyle bilaterally, right greater  
9 than left, but her range of motion was normal. Her Tinel test was positive on the right, but all other  
10 tests of her elbows were negative. In her bilateral hands and wrists, Plaintiff had tenderness to light  
11 touch over the incision area of the dorsal aspect of the right thumb and wrist and over the A1 pulley  
12 right thumb. She also had tenderness over the first extensor compartment of the left wrist, tenderness  
13 over the CMC joint of the bilateral thumbs and tenderness over the A1 pulley of the right middle  
14 finger. Range of motion in her bilateral hands was normal with no evidence of catching on  
15 flexion/extension of the fingers. Grip strength testing revealed a flat response bilaterally. Durkan test  
16 of the bilateral wrists was positive. Finkelstein test also was positive bilaterally. Grind test was  
17 negative on the right and positive on the left. AR 697-700.

18 Based on this evaluation, Dr. Santaniello opined that Plaintiff would be allowed to continue to  
19 do her usual and customary duties, but she required rest periods during the course of the workday:  
20 "From 9 to 9:10 no typing. She has a break from 10:10 to 10:25. From 11:25 to 11:35 no typing. She  
21 has lunch from 12:30 to 1:30. From 2:20 to 2:40 no typing. From 3:40 to 3:55 there is a break." AR  
22 704, 706.

23 The ALJ found this opinion "persuasive overall," explaining:

24 The immediate examination findings, including positive Tinel's test bilaterally and  
25 tenderness to palpitation, but normal ROM in the bilateral hands, and normal ROM and  
26 stability in the bilateral shoulders, generally supports these opinions. Furthermore, these  
27 examination findings are generally consistent with the overall treatment record, showing  
28 positive tests for carpal tunnel and cubital tunnel syndrome, but only mild results on  
NCS/EMG and MRI studies. However, the undersigned notes that the restriction to



1 frequent handling and fingering in the above RFC is more restrictive over the course of a  
2 workday than Dr. Santaniello's proposed work schedule.

3 AR 23.

4 The Court finds that the ALJ properly evaluated the persuasiveness of Dr. Santaniello's 2016  
5 opinion by considering the factors of supportability and consistency. First, the ALJ determined that  
6 Dr. Santaniello's opinion was supported by the examination findings, including positive Tinel's test  
7 bilaterally and tenderness to palpitation, but normal ROM (range of motion) in the bilateral hands,  
8 and normal ROM and stability in the bilateral shoulders. AR 23. This reasoning invokes the  
9 supportability factor, which means the extent to which a medical source supports the medical opinion  
10 by explaining the "relevant ... objective medical evidence." *Id.* § 404.1520c(c)(1)." *Woods*, 2022 WL  
11 1195334, at \* 6. Second, the ALJ determined that Dr. Santaniello's opinion was consistent with the  
12 overall treatment record, including positive tests for carpal tunnel and cubital tunnel syndrome, but  
13 only mild results on NCS/EMG and MRI studies. AR 23. This reasoning invokes the consistency  
14 factor, which "means the extent to which a medical opinion is 'consistent ... with the evidence from  
15 other medical sources and nonmedical sources in the claim.' *Id.* § 404.1520c(c)(2)." *Woods*, 2022  
16 WL 1195334, at \*6. Plaintiff has not challenged the ALJ's evaluation of these factors.

17 Dr. Santaniello also reevaluated Plaintiff in March 2019. AR 1226-1240, 1241. On physical  
18 examination, Plaintiff walked with a normal reciprocal gait. In her bilateral elbows, she had left  
19 elbow tenderness over the medial epicondyle and incision and right elbow tenderness over the medial  
20 epicondyle cubital tunnel. Her range of motion was normal, but her Tinel's test was positive in both  
21 elbows. In her bilateral hands and wrists, Plaintiff had right hand and wrist tenderness over the dorsal  
22 aspect right thumb and over the volar aspect of right wrist. She also had left hand and wrist  
23 tenderness over the first extensor compartment and tenderness over the CMC joint and volar aspect of  
24 the left wrist. Range of motion in her hands was normal, but she had limited extension and radial  
25 deviation of the right wrist. Phalen test, Tinel test and Dukan test were positive on her right and left  
26 wrist. AR 1233-35.

27 On April 16, 2019, as part of his evaluation report, Dr. Santaniello opined that Plaintiff's work  
28 restrictions for the bilateral hands, wrists, and elbows would include no repetitive manipulation more



1 than 30 minutes with a 5-minute rest, no more than 4 hours in an 8-hour day, and no grasping,  
2 pushing, pulling, torquing, or lifting over 15 pounds. AR 1239.

3 However, prior to that opinion, on April 10, 2019, Dr. Santaniello completed a Physician's  
4 Return-To Work & Voucher Report check-the-box form. AR 1241. Dr. Santaniello opined that  
5 Plaintiff could stand, walk, sit, bend, squat, climb, and twist 6-8 hours each, could not crawl, could  
6 reach, drive, grasp, and push/pull 2-4 hours each, but could not lift, push, pull, grasp or torque over  
7 15 pounds. AR 1241.

8 In considering these opinions, the ALJ reasoned as follows:

9 The undersigned finds Dr. Santaniello's 2019 opinions not persuasive. Dr. Santaniello  
10 offered somewhat differing opinions, one week apart, without explanation of the  
11 differences. Nor did Dr. Santaniello explain the differences in work restrictions from 2017  
12 to 2019, given the very similar examination findings. These 2019 opined restrictions are  
13 less consistent with the immediate examination, and less consistent with the overall  
14 treatment record. While the record shows subjective complaints of upper extremity pain  
15 and numbness, and special tests indicated that the claimant had carpal tunnel and cubital  
16 tunnel syndrome, the essentially normal neurological and skeletomuscular findings, normal  
ROM, normal strength, and mild results on NCS/EMG and MRI studies, are not consistent  
with a limitation to only four hours of repetitive manipulation in an eight-hour day, nor  
with limitations to occasional reaching, driving, grasping, or pushing/pulling. Dr.  
Santaniello also does not explain his proposed limitation to 15 pounds for manipulative  
activities, given the stable exam findings. Accordingly, these opinions are not persuasive.

17 AR 24.

18 The Court finds that the ALJ properly evaluated the persuasiveness of Dr. Santaniello's 2019  
19 opinions by considering the factors of supportability and consistency. First, the ALJ determined that  
20 Dr. Santaniello's opinion was less consistent with the current examination and lacked an explanation  
21 for the differing opinions offered one week apart or for the differences in work restrictions from 2017  
22 to 2019, given the very similar examination findings. This reasoning invokes the supportability of  
23 Dr. Santaniello's 2019 opinions, including whether Dr. Santaniello supported his restrictions with  
24 relevant objective findings or in reference to his previous findings and opinion. 20 C.F.R. §  
25 404.1520(c)(1). Second, the ALJ determined that Dr. Santaniello's 2019 opinions were less  
26 consistent with the overall treatment record. The ALJ also determined that the restriction to only four  
27 hours of repetitive manipulation or occasional was not consistent with record evidence of essentially  
28 normal neurological and skeletomuscular findings, normal range of motion, normal strength, and mild

1 results on NCS/EMG and MRI studies. AR 24. This reasoning expressly invokes the consistency  
2 factor regarding the extent to which Dr. Santaniello's opinions were consistent with other medical  
3 evidence in the record. 20 C.F.R. § 404.1520c(c)(2). Plaintiff has not challenged the ALJ's  
4 evaluation of these factors under the applicable regulatory framework.

5 Dr. Salvo

6 On July 2, 2020, Dr. Salvo completed a Residual Functional Capacity Questionnaire –  
7 CARDIAC form. Dr. Salvo identified Plaintiff's diagnoses to include neurocardiogenic syncope,  
8 dysautonomia, POTS, and venous insufficiency. He described Plaintiff's symptoms to include mental  
9 fogging, dizziness, fatigue and syncope. He also identified positive objective signs to include nausea,  
10 chest pain, palpitations, dizziness, shortness of breath, edema and fatigue. Dr. Salvo opined that  
11 Plaintiff had marked limitations of physical activity and her symptoms and limitations were impacted  
12 by depression and anxiety. Dr. Salvo indicated that Plaintiff was incapable of even "low stress" jobs,  
13 and he expected her symptoms to interfere with the attention and concentration necessary to perform  
14 simple work tasks constantly. AR 1456-57.

15 Dr. Salvo opined that Plaintiff could sit comfortably for 5 minutes or stand comfortably for 5  
16 minutes before needing to lie down. He further opined that Plaintiff could sit less than 2 hours in an  
17 8-hour workday and stand and/or walk less than 2 hours in 8-hour workday. Dr. Salvo indicated that  
18 Plaintiff must be able to lie down to avoid passing out/syncope and that she would require  
19 unscheduled breaks every hour to lie down. With prolonged sitting, Plaintiff must elevate her legs  
20 above her head when she feels she is going to pass out for 20% of an 8- hour workday. She would  
21 require additional unscheduled breaks 5 times for 60 minutes for her chronic fatigue, weakness, and  
22 syncope/dizziness. AR 1458. Dr. Salvo further opined that Plaintiff could rarely lift or carry less  
23 than 10 pounds and could rarely twist, stoop (bend), crouch, climb ladders or climb stairs. She must  
24 avoid all exposure to extreme cold, extreme heat, fumes, odors, dusts, gasses, humidity, heights and  
25 hazardous machinery and must avoid moderate exposure to noise and wetness. Dr. Salvo estimated  
26 that Plaintiff would miss more than four days per month on average. Dr. Salvo indicated that  
27 Plaintiff's mental clouding associated with her disorder would make it very difficult to focus on tasks  
28 at hand. AR 1459.

1 The ALJ considered Dr. Salvo's opinion and reasoned as follows:

2 These opined limitations are extreme, unsupported by Dr. Salvo's treatment records, and  
3 not consistent with the overall evidence of record. In his most recent treatment visit before  
4 completing this opinion statement, Dr. Salvo noted in November 2019 that the claimant  
5 complained of severe fatigue, but had no interval change in her POTS disease, and still had  
6 good days and bad days. He noted that her POTS was controlled on medication. A physical  
7 exam was unremarkable, apart from trace non-pitting edema in the bilateral lower  
8 extremities (Ex. 46F/11-14). In February 2020, he stated that she continued to have days  
9 of fatigue and dizziness, but no frank syncope, and had unremarkable exam findings (Ex.  
10 46F/6). In a May 2020 telehealth visit, the claimant complained of dizziness and  
11 presyncope, with a reported two episodes since her last visit. (Ex. 46F/2.) Even with  
12 increased presyncope episodes, the claimant only reported two episodes between February  
13 and May, and yet Dr. Salvo opined that the claimant would have to spend almost all day,  
14 every day lying down, to avoid passing out. Dr. Salvo's treatment records note that the  
15 claimant regularly travels from Texas to California for treatment visits, which clearly  
16 requires both sitting and standing for more than five minutes at a time, and more than two  
17 hours in a day. Prolonged standing would be likely when going through TSA security lines  
18 or checkpoints, or when waiting to board, or when waiting for luggage, if checked. Also,  
19 the airplane ride itself would require prolonged sitting. Furthermore, he has not treated the  
20 claimant for her upper extremity impairments, nor do his records show a review of records  
21 or functional testing that would support a limitation to only 10 pounds of lifting and  
22 carrying, or rare postural activities. These opinions are not consistent with the overall  
23 treatment record, which shows good control of the claimant's cardiac symptoms with  
24 medication and only mild results on NCS/EMG and MRI studies. Accordingly, these  
25 opinions are not persuasive.

26 AR 24-25.

27 The Court finds that the ALJ properly evaluated the persuasiveness of Dr. Salvo's opinion by  
28 considering the relevant factors of consistency and supportability. 20 C.F.R. § 1520c(b)(2). First,  
the ALJ determined that Dr. Salvo's extreme opinion was not supported by his treatment records and  
objective findings, including no interval change in her POTS disease, unremarkable physical  
examinations, limited reports of syncope, but no frank syncope on examination, no treatment for  
upper extremity impairments and no functional testing for lifting, carrying or postural activities. AR  
24, 1388, 1392, 1394, 1397-1400. The ALJ also pointed out that Dr. Salvo's extreme standing and  
sitting limitations were not supported by notations in Dr. Salvo's own treatment records indicating  
that Plaintiff regularly traveled from Texas to California for treatment visits, which would require  
both sitting and standing for more than five minutes at a time. AR 24, 1392, 1397. Second, the ALJ  
determined that Dr. Salvo's opinion was not consistent with the overall treatment record, which

1 showed good control of Plaintiff's cardiac symptoms with medication, and only mild results on  
 2 NCS/EMG and MRI studies. AR 25, 976-77, 1251-52, 1274, 1400. Plaintiff has not challenged the  
 3 ALJ's evaluation of these factors.

4 The Court finds that Plaintiff has not challenged the ALJ's findings under the applicable  
 5 regulations,<sup>6</sup> and on that basis alone, the Court cannot conclude that the ALJ erred. Moreover, under  
 6 the applicable regulatory framework, the Court finds the ALJ properly evaluated the persuasiveness  
 7 of the opinions rendered by Drs. Santaniello and Salvo.

#### 8 **D. Plaintiff's Subjective Complaints**

9 As a final matter, Plaintiff contends that the ALJ failed to give clear and convincing reasons  
 10 for rejecting her subjective complaints. (Doc. 15 at 20.) In deciding whether to admit a claimant's  
 11 subjective complaints, the ALJ must engage in a two-step analysis. *Garrison v. Colvin*, 759 F.3d 995,  
 12 1014 (9th Cir. 2014); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004).  
 13 First, the claimant must produce objective medical evidence of her impairment that could reasonably  
 14 be expected to produce some degree of the symptom or pain alleged. *Garrison*, 759 F.3d at 1014. If  
 15 the claimant satisfies the first step and there is no evidence of malingering, the ALJ may reject the  
 16 claimant's testimony regarding the severity of her symptoms only by offering specific, clear and  
 17 convincing reasons for doing so. *Id.* at 1015.

18 Here, the ALJ found that Plaintiff's medically determinable impairments could reasonably be  
 19 expected to cause the alleged symptoms, but discounted her statements concerning the intensity,  
 20 persistence and limiting effects of those symptoms. AR 17-18. The ALJ was therefore required to  
 21 provide specific, clear and convincing reasons for discounting Plaintiff's subjective complaints.

22 The Court finds that the ALJ provided specific, clear and convincing reasons for discounting  
 23 Plaintiff's subjective complaints. As one reason, the ALJ found that Plaintiff's statements about the  
 24 intensity, persistence, and limiting effects of her symptoms were inconsistent with the objective  
 25 medical evidence. AR 17-18. Although lack of supporting medical evidence cannot form the sole  
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27  
 28 <sup>6</sup> Although the Commissioner identified the relevant regulations in opposition to Plaintiff's opening brief, Plaintiff failed to address or otherwise acknowledge those regulations in her reply brief. (Doc. 20 at 5.)

1 basis for discounting testimony, it is a factor that the ALJ can consider. *See Burch v. Barnhart*, 400  
 2 F.3d 676, 681 (9th Cir. 2005). In this instance, the ALJ agreed that the objective medical evidence  
 3 and Plaintiff's testimony supported certain functional limits, including precluding her from  
 4 performing heavy lifting, limiting her to work at the light level, limiting her to only frequent pushing,  
 5 pulling, reaching, handling, and fingering bilaterally, limiting her to only occasional climbing of  
 6 stairs and ramps, with no climbing of ladders, ropes, or scaffolds, or work at unprotected heights, and  
 7 restricting her from exposure to loud noise, vibration, and atmospheric conditions. AR 26. However,  
 8 the ALJ found that objective findings did not support totally disabling limitations resulting from her  
 9 upper extremity impairments because she had a good result from surgery, with limited findings at her  
 10 qualified medical examination, and mild results from NCS/EMG and MRI studies. AR 26, 683-705,  
 11 976-77, 1194, 1196, 1226-1240, 1251-52, 1274. Similarly, with regard to her POTS and  
 12 dysautonomia, there were few reports of palpitations and no significant findings on examination. AR  
 13 26, 751-54, 756-57, 1392-94. With regard to her fibromyalgia, the ALJ noted that treatment records  
 14 documented only 10/18 tender points, and 0/68 tender or swollen joints. AR 26; *see also* AR 1330-  
 15 33, 1335-38, 1340-44.

16 Second, the ALJ considered that Plaintiff's impairments, including her POTS, dysautonomia,  
 17 and migraine headaches were well controlled with medications. AR 22, 26, 1350-51, 1400. The ALJ  
 18 properly relied on the fact that Plaintiff's impairments were controlled with medication in evaluating  
 19 her symptom testimony. *See Smith v. Kijakazi*, No. 21-35625, 2022 WL 3714345, at \*2 (9th Cir.  
 20 Aug. 29, 2022) (finding ALJ properly relied on evidence that claimant could effectively manage her  
 21 symptoms with medication and chiropractic treatment in rejecting her testimony); *Ervin v. Comm'r of*  
 22 *Soc. Sec.*, No. 2:20-CV-1460-KJN, 2022 WL 4133135, at \*7 (E.D. Cal. Sept. 12, 2022) (finding the  
 23 fact that claimant's impairments could be controlled with medication a legally sufficient reason for  
 24 the ALJ's decision on plaintiff's symptom testimony). Impairments that can be controlled effectively  
 25 with medication are not disabling. *Warre v. Comm'r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir.  
 26 2006).

27 Third, the ALJ cited Plaintiff's testimony that she had been able to fly back and forth between  
 28 California and Texas unaccompanied on a regular basis. AR 26. A claimant's "out-of-state travels"

may “contradict[ ] her subjective complaints of pain and lack of mobility.” *Beck v. Astrue*, 303 F. App’x. 455, 458 (9th Cir. 2008); *see also Hanes v. Colvin*, 651 F. App’x. 703, 705 (9th Cir. 2016) (holding that claimant’s description of extreme pain was inconsistent with her description of her daily activities, which included cooking, cleaning, shopping, and traveling). The ALJ noted that Plaintiff’s regular travel would require sitting and standing for more than five minutes at a time and more than 2 hours in a day, reasoning that the airplane ride alone would require prolonged sitting. AR 24. Additionally, the ALJ considered Plaintiff’s testimony that she would inform the flight attendant and her seatmate of her medical issues and not to worry if she had a syncopal episode. The ALJ did not find this testimony credible, concluding that such a report would routinely require a determination by the captain of whether Plaintiff would be allowed to fly and there is no indication that this was a regular occurrence. AR 26. The ALJ properly discounted Plaintiff’s symptom testimony based on her reported ability to fly out-of-state alone on a regular basis.

For these reasons, the Court finds the ALJ’s assessment of Plaintiff’s subjective complaints free of reversible error. Even if one of the reasons provided by the ALJ could be found inadequate, there are sufficient other reasons provided to support the assessment of Plaintiff’s subjective complaints. *See Batson*, 359 F.3d at 1197.

### CONCLUSION

Based on the foregoing, the Court finds that the ALJ’s decision is supported by substantial evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court DENIES Plaintiff’s appeal from the administrative decision of the Commissioner of Social Security. The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant Kilolo Kijakazi, Acting Commissioner of Social Security, and against Plaintiff Pamela Marie Deacon.

IT IS SO ORDERED.

Dated: November 30, 2022

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE